

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION THREE

STATE OF MISSOURI,	)	No. ED102236
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Clark County
vs.	)	13 CK-CR00625-01
	)	
RICHARD W. MATTIX,	)	Honorable Gary L. Dial
	)	
Appellant.	)	Filed: March 8, 2016

Richard W. Mattix (“Appellant”) appeals the judgment entered after a jury trial convicting him of driving while intoxicated.

REVERSED AND REMANDED.

Division Three holds: The trial court abused its discretion in admitting blood alcohol test results from a breath analyzer used on Appellant, because the breath analyzer was not calibrated in conformance with the version of 19 CSR 25-30.051(2) (effective December 30, 2012) in effect at the time of Appellant’s arrest. The evidence was prejudicial in that it had a material effect on the outcome of the trial, because sections 577.037.1 and .4 RSMo Supp. 2002 create a statutory presumption of intoxication for blood alcohol levels above 0.08, the State highlighted Appellant’s blood alcohol level in closing argument, and the jury relied on the blood alcohol test results in reaching its verdict.

Opinion by: Robert M. Clayton III, P.J.  
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

Attorney for Appellant: Casey A. Taylor

Attorney for Respondent: Chris Koster and Evan J. Buchheim

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
---